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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 David G Lowthorp,

10 Plaintiff,

11 v.

12 Mesa Air Group Incorporated, et al.,

13 Defendants.
14

No. CV-20-00648-PHX-DLR

ORDER

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16 Before the Court are three competing motions for appointment as lead plaintiff and
17 approval of lead counsel, (Docs. 10, 15, 22).¹ For the following reasons, Dekalb County
18 Pension Fund’s (“Dekalb”) motion, (Doc. 22), is granted and the remaining competing
19 motions, (Docs. 10, 15), are denied.²

20 This is a class action lawsuit—filed on behalf of those who purchased or acquired
21 Mesa Air Group, Inc. (“Mesa”) securities pursuant Mesa’s initial public offering
22 registration statement in August of 2018—that seeks to recover damages caused by
23 Defendants’ alleged violation of the Securities Act of 1933. (Doc. 1). The Private
24 Securities Litigation Reform Act of 1995 (PSLRA) establishes the procedure for selecting

25 ¹ Mr. Behr has also filed a motion to appoint counsel and lead plaintiff (Doc. 13)
26 but moves to withdraw that motion. (Doc. 23.) The Court will grant Mr. Behr’s motion to
27 withdraw.

28 ² City of Pittsburg Comprehensive Municipal Pension Trust Fund’s (“Pittsburg”) request for oral argument is denied because the issues are adequately briefed and oral argument will not help the Court resolve the motion. See Fed. R. Civ. P. 78(b); LRCiv. 7.2(f); *Lake at Las Vegas Investors Grp., Inc. v. Pac. Malibu Dev.*, 933 F.2d 724, 729 (9th Cir. 1991).

1 a lead plaintiff in class actions brought under the Securities Act. *See* 15 U.S.C. § 77z-
2 1(a)(1). Within twenty days of filing the complaint, the plaintiff(s) responsible for bringing
3 the action must publish a notice in a widely circulated publication or service advising the
4 members of the purported class of the pendency of the action, its claims, and the class
5 period. § 77z-1(a)(3)(A)(i). Any member of the purported class has 60 days from the date
6 the notice was published to move to serve as lead plaintiff. *Id.* Within 90 days of
7 publication, the court must “consider any motion made by a purported class member . . .
8 and shall appoint as lead plaintiff the member or members of the purported plaintiff class
9 that the court determines to be most capable of adequately representing the interest of class
10 members . . .” § 77z-1(a)(3)(B)(i).

11 The PSLRA establishes a rebuttable presumption that the most adequate plaintiff is
12 the person or entity that: (1) “has either filed the complaint or made a motion in response
13 to a notice,” (2) “has the largest financial interest in the relief sought by the class,” and
14 “otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.”
15 § 77z-1(a)(3)(B)(iii)(I). This presumption is rebuttable only by proof that the
16 presumptively adequate plaintiff “will not fairly and adequately protect the interests of the
17 class” or “is subject to unique defenses that render such plaintiff incapable of adequately
18 representing the class.” § 78u-4(a)(3)(B)(iii)(II).

19 Plaintiff David Lowthorp filed the complaint in this matter on April 1, 2020 and
20 published notice of the action in PR Newswire the same day. (Doc. 1; Doc. 20-1.) On
21 June 1, 2020, Mr. Glover, Pittsburg, and Dekalb timely filed their separate motions for
22 appointment as lead plaintiff. (Docs. 10, 15, 22.) On June 15 and 16, 2020, Pittsburg and
23 Dekalb filed responses to the competing motions and Mr. Glover filed a notice of non-
24 opposition. (Docs. 28-30.) All three movants satisfy the PSLRA’s first requirement
25 because they have filed motions in response to a notice.

26 The three movants claim to have suffered the following financial losses as a result
27 of Defendants’ alleged violations of the Securities Act:

- 28 1. Mr. Glover: \$46,725, (Doc. 11 at 4);

1 2. Pittsburg: \$137,606.66, (Doc. 16 at 7);

2 3. Dekalb: \$308, 151, (Doc. 22 at 9).

3 No one disputes the accuracy of these figures. Dekalb therefore has the largest financial
4 interest in the relief sought by the class.

5 Dekalb also satisfies Rule 23's typicality and adequacy requirements. "The test of
6 typicality is whether other members have the same or similar injury, whether the action is
7 based on conduct which is not unique to the named plaintiffs, and whether other class
8 members have been injured by the same course of conduct." *Hanon v. Dataproducts*
9 *Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (internal quotations and citation omitted). Dekalb
10 meets the typicality requirement because, like the other purported class members, it claims
11 to have purchased Mesa stock pursuant and/or traceable to the initial public offering at
12 process that were allegedly artificially inflated and sustained damages as a result.

13 The test for adequacy is whether: "(1) the proposed lead plaintiff's interests are in
14 common with, and not antagonistic to, those of the class; and (2) proposed lead plaintiff's
15 counsel are qualified, experienced, and generally able to conduct the litigation." *Schonfield*
16 *v. Dendreon Corp.*, No. C07-800MJP, 2007 WL 2916533, at *4 (W.D. Wash. Oct. 4, 2007)
17 (citing *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978)). As a
18 fellow purchaser of Mesa stock during the class period who suffered financially from
19 Defendants' alleged violations of the Securities Act, Dekalb's interests are identical to
20 those of the other purported class members and movants, and no one asserts otherwise.³
21 Dekalb is represented by Faruqi & Faruqi, LLP ("Faruqi") as lead counsel and the
22 DeConcini Firm (DeConcini") as liaison counsel. (Doc. 22 at 14.) Dekalb has
23 demonstrated that Faruqi and DeConcini are qualified, experienced, and capable of
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25 ³ Notably, Mr. Glover expresses no opposition to Dekalb's appointment. (Doc. 30.)
26 Further, rather than asserting that Dekalb would be an inadequate lead plaintiff or would
27 be subject to distinct defenses in order to rebut the presumption, Pittsburg merely argues
28 that Pittsburg would be better in the role. It cites its responsibility as the lead plaintiff in a
parallel state action and asks the Court to overlook the fact that Pittsburg has a smaller
financial interest than Dekalb. (Doc. 28.) The Court is unpersuaded by this rationale. In
addition, Dekalb correctly argues that Pittsburg's participation in the state action may
subject Pittsburg to unique defenses that render it incapable of adequately representing the
class.

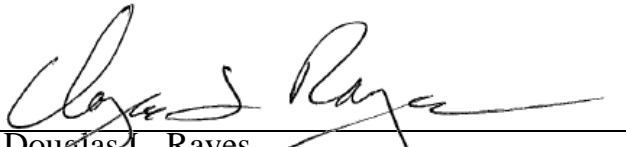
1 conducting successful securities litigation.⁴ (*Id.* at 7-14.) Moreover, no one has objected
2 to or otherwise raised concerns regarding the qualifications of Faruqi or DeConcini, and
3 under the PSLRA the Court generally defers to the lead plaintiff’s proposed counsel unless
4 there is reason to believe that chosen counsel will not adequately protect the interests of
5 the class. *Cohen v. U.S. Dist. Ct. for N. Dist. of Cal.*, 586 F.3d 703, 711-12 (9th Cir. 2009).
6 The Court therefore finds that Dekalb is the most adequate plaintiff to represent the
7 purported class.

8 **IT IS ORDERED** that Dekalb’s motion for appointment as lead plaintiff and
9 approval of its selection of lead counsel, (Doc. 22), is **GRANTED**. Dekalb’s selection of
10 lead counsel is approved, and Faruqi & Faruqi, LLC is appointment as lead counsel for the
11 purported class. The DeConcini Firm is appointed to serve as liaison counsel for lead
12 plaintiff and the purported class.

13 **IT IS FURTHER ORDERED** that Mr. Glover and Pittsburg’s competing motions
14 for appointment as lead plaintiff and approval of lead counsel, (Docs. 10, 15), are
15 **DENIED**.

16 **IT IS FURTHER ORDERED** that the motion to withdraw the motion to appoint
17 counsel and lead plaintiff (Doc. 23) is **GRANTED**. Mr. Behr’s motion to appoint counsel
18 and lead plaintiff (Doc. 13) is withdrawn.

19 Dated this 22nd day of June, 2020.

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23 Douglas L. Rayes
24 United States District Judge
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28 ⁴ Indeed, other courts have found Faruqi to be qualified to serve as lead counsel in
cases under the Securities Act. *See, e.g., Mobile Games & Entm’t Grp., Ltd.*, 68 F. Supp.
3d 390, 401 (S.D.N.Y. 2014).